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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,540	02/29/2000	DIETMAR PRZYTULLA	2511-089	8719
7590 03/12/2004				
PENNIE & EDMONDS 1667 K STREET NW WASHINGTON, DC 20006			EXAMINER NOLAN, SANDRA M	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/486,540

Applicant(s)

PRZYTULLA ET AL.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003 and 10 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 17-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claims***

1. Claims 17-44 are pending. Claims 43-44 are new.

### ***Rejections Maintained***

2. The 35 USC 112 rejection of claims 26-33, 38 and 39, as set out in section 3 of the 09 May 2003 office action, is maintained for reasons of record.
3. The 35 USC 103 rejection of claims 17-25, as unpatentable over Pfeiffer et al (US 4,880,138) in view of Dunken et al (US 5,232,120), as recited in section 7 of the 09 May 2003 office action, is maintained for reasons of record.
4. The 35 USC 103 rejection of claims 26-42, as unpatentable over Watson (US-5,544,777) in view of Dunken, is maintained for reasons of record, as recited in section 8 of the 09 May 2003 office action.

### ***New Rejection***

5. Claims 43-44 are rejected as unpatentable over Watson in view of Dunken for the reasons made of record in section 8 of the 09 May 2003 office action.

### ***Response to Arguments***

6. Applicant's arguments filed in the 10 November 2003 response have been fully considered but they are not persuasive.

The arguments in that response will be discussed in the order presented.

On page 7 of the response, applicants argue the 35 USC 112 rejection of claims 17-25 is improper. They assert that recitation of the phrase "at least" in claims 29, 32 and 33 appears to be the basis for the examiner's position that the phrases "central portions . . . each provided" and "an outer surface . . . on the inner surface" render the 35 USC 112 rejection proper. They have removed "at least" from claims 29, 32 and 33 in apparent attempt to correct the claims. Furthermore, they argue, at pages 8-9, that the language is supported by the figures on page 8, lines 29-33 of the specification.

However, removal of the phrase "at least" does not render the rejection moot. The phrases in question are not supported by the original specification and the discussion at pages 7-9 does not change this fact. The alleged references, at page 9, lines 11-13 and 23-25 of the specification, to Figures 14-15 are not an adequate substitute for the recitation of the claimed limitation. Also, the recitations of original claim 16 and the passage at page 8, lines 29-33 do not contain the phrase "central portions" as recited in the claims.

On page 10 of the response, applicants argue that the 35 USC 103 rejection of claims 26-42 over Watson and Dunken is improper. They assert that the Watson blow-molded container is different from the containers recited in applicants' claims 26-42 because Watson fails to teach vertical ribs formed by blow molding.

However, the rejection at issue involves a combination of the Watson and Dunken teachings. Dunken teaches vertical ribs in plastic cylindrical drums. Dunken's teaching of vertical ribs is suggestive of applicants' vertical ribs. Recall pages 3 and 4 of the 09 May 2003 office action.

Also, in the absence of convincing objective evidence to the contrary, the process limitations argued are not germane to the patentability of the claimed articles.

On page 10, applicants argue that Dunken's separate removable lid teaches away from the unitarily constructed top of Watson.

However, Dunken was not cited for its teaching of a lid. It was cited as teaching vertical ribs. Recall pages 3 and 4 of the 09 May 2003 office action.

On page 11, applicants argue that new claims 43-44 are patentable over the Watson and Dunken because the structural features recited therein are not disclosed in either reference.

However, in the absence of convincing objective evidence to the contrary, the structural features of claims 43-44 are deemed matters of design choice and/or customization for a particular use and do not serve to distinguish the claimed articles from those suggested by the combination of Watson and Dunken.

### ***Final Rejection***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Please direct any inquiry concerning this communication to Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time. If attempts to reach her are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan  
Primary Examiner  
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09486540(20040309)